CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

July 9, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 10:05 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Item #1. Approval of the Minutes of the June 8, 2001 Commission Meeting.

The minutes of the June 8, 2001 Commission meeting were distributed to the Commission and made available to the public. Commissioner Swanson motioned that the minutes be approved. Commissioner Knox seconded the motion. There being no objection the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Item #3. *In re Olson* Opinion Request, FPPC No. O-01-112.

Commission Counsel Scott Tocher presented the draft opinion which memorializes the Commission's decision at the June 8, 2001 meeting that certain Los Angeles city ordinances regarding reporting requirements for statewide committees are preempted by §§ 81009.5 and 85312 of the Political Reform Act (Act).

Anthony S. Alperin, of the city of Los Angeles (LA) stated that the Commission should not consider the opinion request by the political parties because the issues should be resolved through the courts. He suggested that the Commission not issue an opinion on this case because the request is outside the scope of the Commission's authority.

Commissioner Downey stated that Mr. Alperin had an appealing argument that the opinion request was not in respect to an affirmative duty of the political parties, but asked Mr. Alperin whether the PRA excuses a duty imposed by a third party governmental agency.

Mr. Alperin responded that the Act authorizes someone to seek an opinion with regard to that person's duties under the Act, and not with regard to that person's duties under some other law enacted by some other governmental unit. There is no duty under the Act that is implicated by the ordinances that the city has adopted. Those ordinances do not prevent or inhibit anyone from complying with the requirements of the Act.

Mr. Alperin explained that the FPPC authorizes the Commission to issue opinions with regard to the requestor's duties, not with regard to someone else's duties, under the Act. He believed that the courts should decide whether the "home rule" provisions of the state consitution prevent the Act from preempting the city's authority to adopt the ordinances.

Commissioner Downey asked Mr. Alperin whether the Commission could issue an opinion advising the requestors as to whether the Act excuses the performance of a duty.

Mr. Alperin responded that the Act does not excuse activity that does not fall within the jurisdiction of the Act. He discussed excuses and the definition of excuses and stated that the Commission does not have the authority to interpret provisions outside the Act, nor to advise people whether or not another law is valid.

Chairman Getman asked whether Mr. Alperin thought that the Commission could issue an opinion excusing LA from complying with § 81009.5 because of their unique circumstance.

Mr. Alperin responded that if the city of Los Angeles asked the Commission for an opinion regarding LA's duties under the Act, the Commission would have the authority to issue that opinion. But the city of LA did not request the opinion and therefore the Commission was not authorized to issue the opinion. If the legal question that the Commission had to decide was not a question that involved interpretation of the Act, but was a legal question of some other nature (such as the scope of "home rule"), then the Commission should not issue an opinion. He stated that the closest case to compare this with is *Johnson v Bradley* which upheld the LA public financing provisions.

In response to a question, Mr. Alperin stated that their position was based on their interpretation of the law, and noted that their position would be the same if the Commission determined that LA's ordinances did not conflict with the PRA.

Mr. Alperin agreed that the Commission is charged with interpreting the PRA, but noted that the Commission was not charged with interpreting the provisions of the state constitution which relate to home rule by charter cities. In order to render an opinion in this case, the Commission must interpret those rules.

Chairman Getman pointed out that the Commission would have to interpret the PRA first to determine whether it conflicts with the LA law and to determine whether it provides a sufficient state interest. She believed that the court would benefit from the views of the Commission.

Mr. Alperin noted that if the matter went to court, the Commission could file an amicus brief.

Commissioner Knox asked whether Mr. Alperin's position was that the Commission could not issue an opinion where there is a question with respect to the exclusivity of the PRA.

Mr. Alperin responded that he was not taking that position. If the city of LA had asked for the opinion, then it would be less clear that the Commission does not have jurisdiction.

In response to a question, Mr. Alperin stated that the LA city council had on its July 10, 2001 agenda an ordinance which would make many of the rules under the two emergency ordinances permanent. The LA city council was aware of the Commission's position on the opinion.

Miriam Krinsky, President of the Los Angeles Ethics Commission (LAEC), stated their position that LA's city ordinances should not be preempted by state law.

Ms. Krinsky was concerned that the draft opinion may not have fully considered the city's interest in enacting the ordinances, that the state's desire for uniformity should not be considered sufficient reason to preempt their ordinances, and that the concern that their ordinances were overly broad was not a valid concern.

Ms. Krinsky outlined the city's interest that the voters should be fully informed about the campaign contributions and expenditures in an election when they vote. She outlined the city's matching funds program, noting that the draft opinion did not adequately address the city's concern that the matching funds program must operate without distortion. The Commission's draft opinion would affect their ability to determine when their expenditure limits had been met and would make it difficult to effectively administer the program.

Ms. Krinsky noted that *Johnson v. Bradley* had language indicating that the need for uniformity was a "bare interest" and not legally sufficient to override a municipality's interest. If uniformity was considered a sufficient state interest, she did not believe that the LA ordinances were so disturbing that the Commission must be compelled to act. She noted that the concerns were first raised 17-20 years ago, before advanced technologies were available, and that the state and others had already complied with provisions that were nearly identical to these provisions in two election cycles. There was no record indicating that their ordinances created insurmountable difficulties when weighed against their concern that they keep in place the city's system of open, accountable, and successful matching funds driven elections.

Ms. Krinsky defended their position that all contributions from the political parties must be reported. She noted that reporting is required only if a party or other organization voluntarily elects to participate in the local elections. They require reporting of large contributions only during the couple of month period that precedes their election. She pointed out that, according to the data in the opinion, during the three month period before their primary election around $2 1/2 million was raised in contributions and only 4% of that amount was identified as having been spent on state candidates. She stated that there was not a more workable and narrow provision. People who contribute to the parties do not earmark their contributions to be used in the local races because they would then be subject to the local contribution limits and the whole point of the contributions is to avoid those limits. Their ordinances provide the only way to give voters the relevant information. She noted that the U.S. Supreme Court, in the *FEC v. Republican Federal Campaign Committee of Colorado (Colorado II)*, determined that earmarking provisions are not effective.

Ms. Krinsky encouraged the Commission not to rush forward and deem their ordinances preempted.

Commissioner Swanson pointed out that LA passed the ordinances a few days before an election. She questioned why they passed the ordinance without discussing it first with the Commission, pointing out that the issue is within the jurisdiction of the FPPC. Since the information will be posted on the internet and would be instantly available to LA staff, she questioned whether it was a jurisdictional issue or an issue of getting the information to the public efficiently.

Ms. Krinsky responded that Proposition 34 caused the problems and left them with two choices. They could have passed the ordinances in an effort to fix the problems caused by Proposition 34 in time to make the matching funds program continue to be effective for their election. Alternatively, they could have allowed that election to go forward and give up trying to make the matching funds program effective for that election in order to work with the FPPC. She agreed that further dialogue would have been preferable.

Ms. Krinsky stated that this was not a jurisdictional issue, but that they wanted to ensure that the information was available to the public before their election. Without these ordinances, there was no guarantee that the voters would have the information they needed before the election. Additionally, they wanted the candidates to know, within 24 hours, when independent spending had occurred so that they would know whether the expenditure thresholds had been reached and could then determine that their expenditure limits had been raised. She pointed out that all independent spending was treated the same under their matching fund system, regardless of whether the political party or an individual spent the money.

Chairman Getman stated that if the state law is causing problems for their local campaign finance system, then the affected groups should work together to make the state law work. When LA passed their ordinances, a conflict was created with state law.

Chairman Getman noted that she understood that the expenditure limits had already been lifted before the ordinances were passed, eliminating the need for staff to focus on the matching funds program in the opinion. She also pointed out that only 4% of the political party contributions went to state candidates, but those statistics included only the direct contributions, and did not consider other expenditures that both parties were making on behalf of their statewide effort.

Chairman Getman agreed that there is no workable way to craft a more limited provision because the committees operate on a state level. It is the job of the FPPC to capture those contributions. She understood that SB 34 will provide the information that will enable the LA city ordinance to work, but noted that if that is incorrect, Commission staff have offered to work with LA staff to identify ways to make the state law work for the local jurisdiction. She noted that the FPPC would work with the legislature to make those changes.

Ms. Krinsky clarified that she was not criticizing the FPPC for rushing to judgement but was suggesting that the draft opinion should not be adopted. She pointed out that if LA had waited to discuss this issue with the FPPC they would have had no ability to impact an election that was already underway. Spending limits had been lifted in one race, but there were other races in that election that had not yet lifted the spending limits. Ms. Krinsky pointed out that the ordinance will apply in future elections and the fact that a spending limit had been lifted in one race was not relevant. They had the responsibility to assure that their system operated without obstruction.

Ms. Krinsky pointed out that the California Supreme Court had said that local municipal cities have an obligation, a right, and a responsibility to ensure that the manner and conduct of their elections is consistent with their city laws and objectives. She did not believe that a reinterpretation of state law would fix a provision of state law that distorts the city's operation of its laws.

Ms. Krinsky did not agree that SB 34 would capture the necessary information in a manner that would preserve their matching funds program. She wanted SB 34 to include everything that is in their ordinances and, until it does, she believe that LA had an interest in trying to ensure that their system works.

Commissioner Swanson asked whether Ms. Krinsky would pull the ordinances off of the LA City Council's July 10 agenda if the Commission did not issue the opinion.

Ms. Krinsky responded that the city council would make that decision. She pointed out that, if the state law included everything that was in their ordinances, there would be no need for the ordinances. However, she understood that those involved in that process did not support everything in the ordinances.

Mr. Alperin, in response to a question, said he understood that the Democratic Party had filed statements required by the ordinance, but did not know whether the Republican Party had filed.

Commissioner Swanson stated that she favored local rules, but that the state rules must be followed. To have full disclosure, there must be a measure of compliance in order to determine how useful the rules are.

Mr. Alperin stated that prior to Proposition 34, the payments for the communications would have been considered contributions or independent expenditures. Those independent expenditures would have been reported on the same 24-hour basis. The parties that are now complaining had filed those reports, and there was a high level of compliance in the past.

Mr. Alperin stated that there was no way state legislation could have been adopted prior to their election.

Chairman Getman understood that SB 34 would once again make the payments contributions or independent expenditures and suggested that staff clarify the issue before a decision on supporting the legislation is made. She believed that a voluntary compliance regime pending resolution through the legislature could have been an alternative approach.

Chairman Getman clarified that the votes of the Commission listed on page 12 of the draft opinion were the votes taken at the last meeting and would be updated to reflect the vote that would be taken when the Commission makes its final decision. In response to a request by Mr. Alperin, Chairman Getman requested that the words in the first paragraph on page 3 of the draft opinion "and independent expenditures on behalf of" be struck from the opinion because they were in error.

Commissioner Downey motioned that the Commission adopt the draft opinion with the indicted change. Commissioner Knox seconded the motion. The motion carried by a vote of 4-0.

Item #7. Proposition 34 Regulations: Policy Issues Associated with the Interpretation of Single Bank Account Rule.

Senior Commission Counsel John Wallace explained that the staff memorandum dealt with the "one bank account" rule created by Proposition 73. Proposition 34 did not repeal this section, but staff has found that this rule may be impacted by other regulations under consideration as a result of Proposition 34. As an example, the question of whether separate bank accounts should be used for primary and general elections would be affected by the "one bank account" rule. Some of the issues presented in the staff memorandum were interlinked with items on the July agenda.

Mr. Wallace explained that § 85317 allows contributions to be carried over without attribution of contributions to specific contributors. If the Commission decides to construe this section broadly, allowing carryover without attribution in every campaign for re-election, it would result in contributors being able to contribute twice to the same election. It would also render irrelevant regulation 18525, which limits expenditures for certain purposes out of certain campaign committees. It would also predetermine the redesignation of campaign bank accounts.

Mr. Wallace requested guidance from the Commission regarding the carryover provision of § 85317. He suggested that staff either prepare specific regulatory language for the next Commission meeting or prepare different optional interpretations in draft language for consideration at the next meeting.

In response to a question, Mr. Wallace stated that § 85306 also dealt with funds on hand as of December 31, 2001.

Ms. Menchaca clarified that § 85306 provides that funds on hand as of January 1, 2001 may be used to seek elective office without attributing funds to specific contributors.

Mr. Wallace agreed that it would be fair to consider § 85306 a second carryover section. He noted that the Commission could consider it to be a carryover provision in every case where someone is seeking reelection.

Chairman Getman responded that, if the Commission determined that it was appropriate to carry over from one term to another, it might be too broad because there would be no application of the transfer rules and no ability to implement the contribution limits. Carrying over from primary to general might make sense but there are separate contribution limits for both and carrying over without attribution would undo the separate contribution limits.

Mr. Wallace noted that staff was attempting to determine what the statute intended to do. Staff's interpretation and recommendation was intended to do the least damage to the existing system of Proposition 34. He explained that there was nothing in the ballot pamphlet providing guidance to this section.

Chairman Getman stated that the Commission is working toward the concept that Proposition 34 is organized around elections. In that sense, there would be a starting point and an ending point to a committee and to an election. She questioned how the Commission would determine when and under what circumstances carryover would occur.

Mr. Wallace responded that the carryover issue was somewhat interlinked with § 85316 and that if a committee had debt they could raise up to the net debt, but once the election was over there would be no more fundraising under the old committee. The carryover provisions would only be applicable where there was no debt.

Chairman Getman noted that there have been objections to the Commission's initial decision that § 85316 not apply to elections prior to Proposition 34 because there was no regulation requiring that a committee be closed. She suggested that staff work on a regulation forcing closure of a committee, and that if a committee has outstanding debt those debts must be either paid or written off. In that way the committee cannot be allowed to continue in existence and be used as a fundraising vehicle once the election cycle has been completed.

Ms. Menchaca explained that § 84214 deals with termination of committees and gives the Commission flexibility to explore regulations requiring that committees be closed.

Mr. Wallace pointed out that if most of the statutes in Proposition 34 are not considered to be applicable to preexisting committees, requiring that committees be closed would help in the interpretation and application of those statutes.

Chairman Getman agreed. Closing out the backlog of committees could eliminate many of the difficulties.

Commissioner Swanson expressed her concern that the portion of the redesignation issue that requires that the bank accounts established to a previous office be closed and other requirements under Proposition 34 have been driving the Commission to make decisions through the back door.

Mr. Wallace agreed, explaining that the Commission was attempting to meld Proposition 73 provisions with the Proposition 34 provisions, and the two provisions do not fit together perfectly. If the Commission wanted to change the "one bank account" rule, they could pursue legislation, or to try to harmonize and construe it with Proposition 34. He believed that there may be a way to do it by regulation.

Chairman Getman suggested that the Commission allow one committee and one bank account per election, and when a new election is started, the previous committee and bank account be closed.

Ms. Menchaca thought it could be done, but that it might require changing some of the language in regulation 18525.

Mr. Wallace noted that it would mean that redesignation of campaign bank accounts would not be allowed for future reelections to the same office. To an extent the redesignation issue overlaps with the issue of carryover. He explained that staff believed that redesignation is problematic and would support its elimination. He pointed out that interested persons had voiced some opposition to eliminating redesignation because of the costs involved with opening new committees as well as the potential errors that could occur when transferring the funds back and forth.

Chuck Bell, of Bell, McAndrews, Hiltack and Davidian, supported seeking a legislative rationalization of the old statutes and Proposition 34. He stated that the "one bank account" rule should be reconsidered because it had posed a lot of problems. He believed that the drafters of Proposition 34 were trying to move the Commission away from looking too closely at carryover and transfer rules and how they might impact contributions that had been received by a committee either prior to Proposition 34 effective dates or between a primary and general election. They wanted to avoid attributing to a contributor to a previous election a contribution that consists of funds carried forward because, as addressed in § 85317, it was irrelevant. The relevant limit was the contribution for the general election.

Mr. Bell stated that the federal election system has worked well without requiring termination of committees after the primary election and would oppose such a scheme here. He believed that the enforcement objectives can be handled with requiring that the committees be terminated. He noted that § 85317 suggested that the drafters of Proposition 34 would have agreed with him.

In response to a question, Mr. Bell stated that the biggest problem with closing down committees was dealing with outstanding debt. He noted that the FEC has not solved the problem very well when they began using a debt settlement process. That process requires that the committee request a formal statement from the creditors acknowledging that they would agree to retire the debt. He noted that a committee that has debt does not always have the funds and resources to try and settle the debt. He agreed that resolving the debt issue was the only reason to keep the committees open.

Mr. Bell noted that the "one bank account" rule under Proposition 73 was really a "two bank account" rule, because sometimes committees had officeholding accounts. Those accounts allowed caucus fundraising efforts, active campaigning for other candidates, and a variety of things that would not necessarily be considered officeholding expenses.

In response to a question, Mr. Wallace stated that requiring candidates to close out the committees would not circumvent the public's access to information, unless the records were not retained as long.

Commissioner Swanson requested that staff explore the question to ensure that the public's access to the information not be inadvertently inhibited.

Technical Assistance Division Chief Carla Wardlow agreed that the reporting goes on as long as the candidate is raising or spending any money. If the accounts and committees are required to be closed the committees would no longer be able to raise or spend money to pay off the debt.

Chairman Getman stated that fundraising to pay debt should be done within a certain amount of time after an election, but not extending far into the future. Committees should decide whether they are going to pay off the debt. She noted that different contribution limits that apply to different elections make it necessary to phase out the old system within a reasonable amount of time.

Mr. Wallace agreed that closing out the pre-Proposition 34 committees would resolve a lot of the issues that have arisen with the interpretation of Proposition 34.

The Commissioners were in agreement that staff should explore the concept of closing out the committees.

Mr. Wallace stated that they would have language ready by the August meeting and would provide as many options as possible in the text.

Chairman Getman suggested that staff hold at least one interested persons meeting before the Commission considers the options to discern what practical issues might arise. She noted that if a committee had a legitimate debt and there was a dispute with the creditors, there must be a way to resolve that dispute.

Ms. Menchaca, in response to a question, noted that the issue is time-sensitive in the sense that staff was requesting that the Commission make decisions pertaining to other sections which overlap this issue. She asked that staff work on this issue in conjunction with prenotice discussion of other regulations. Ms. Menchaca agreed that an interested persons meeting would be very useful.

Chairman Getman asked the Commissioners if they were comfortable with exploring the possibility of eliminating redesignating committees and requiring new committees for each election cycle.

There was no objection from the commission.

Mr. Wallace suggested that staff prepare language for consideration at the August commission meeting, with a possible emergency adoption in September, 2001.

Chairman Getman noted that it would allow ample opportunity for public input of any practical problems with the concept. She requested that staff present both the pros and cons of the concept, and asked that they interpret § 85317 to give the Commission a sense of what it is supposed to mean.

In response to a question, Mr. Wallace stated that the issue of having separate accounts for the primary and general elections raises different issues than the redesignation of committees, and believed that it should be treated separately. Staff believed that it could be dealt with after the separate bank account issues had been dealt with.

In response to a question, Mr. Wallace stated that the Franchise Tax Board would be included in the discussions because of their opposition to separate committees.

Chairman Getman clarified that there was a concern from the public that the more committees and accounts there are, the more possibilities for errors exist, especially going from a primary to a general election.

Commissioner Swanson requested that staff present both the advantages and disadvantages, noting her concern that closing out committees should not become a means to "cover your tracks".

The Commission adjourned for a break at 11:38 a.m.

The Commission meeting reconvened at 12:05 p.m.

Item #6. Proposition 34 Regulations: Treatment of Outstanding Debt (§85316) - Second Pre-notice Discussion of Adoption of Regulation 18531.6.

Commission Counsel Holly Armstrong explained that the Commission had decided at its last meeting that § 85316 applied only to elections that occurred on or after January 1, 2001, with regard to the limit on fundraising not to exceed net debt and to limits on each contribution not exceeding the contribution limit in effect for that election.

In response to one concern submitted to staff, Ms. Armstrong confirmed that contributions to other legislators by a termed-out legislator would be subject to contribution limits just like any other contributions.

Concern was also expressed by the public over whether non-termed out legislators can raise funds for their post-2001 campaign in their pre-2001 committee, and Ms. Armstrong reported that staff included a provision which would require that any funds transferred would be subject to the provisions of the transfer regulation.

Ms. Armstrong reported that the revised draft regulation included options for consideration with regard to the applicable contribution limits to the pre-2001 elections, narrowed the issues addressed by the regulation, and eliminated extraneous material that did not deal with outstanding debt.

She noted that there had been some public comment that the regulation might be confusing in that it might be read to preclude a candidate from having both pre and post 2001 committees open simultaneously. She stated that staff would be looking to address that concern with some revisions.

Decision 1

The Commission was asked to consider the contribution limits that would be applied to elections held prior to January 1, 2001. Ms. Armstrong explained that option "a" would affect only those candidates who have debt remaining from special or special runoff elections.

She noted that page 1, line 7 of the regulation language should have the words "in a special" added, as presented in the staff memo.

Ms. Armstrong explained that option "b" provided that there would be no contribution limits in effect for elections held prior to January 1, 2001.

Ms. Armstrong stated that the argument in favor of option "a" was that there seemed to be no reason for the phrase "applicable contribution limit for that election" in the statute if it was not intended to consider elections prior to January 1, 2001, unless it was meant to consider changes in contribution limits caused by future inflation.

Ms. Menchaca explained that staff advised in the *Bauer* advise letter that the contribution limits outlined in option "a" were in effect, and noted that if the Commission did not choose option "a" the advice letter would need to be rescinded.

Chairman Getman expressed concern with interpreting the last clause of option "a" because the Commission already had decided that the entire section does not apply. She also questioned whether Proposition 73 even exists anymore, noting that the Commission would be applying limits for a Proposition that doesn't exist if the limits of option "a" are adopted.

Commissioner Downey agreed, noting that it is tempting to avoid an unlimited fundraising possibility by giving partial application of § 85316 to pre-January 1, 2001 elections. But he believed there were other ways to work around it and that the Commission should interpret the statute as being written with reference to the limitations appearing in Proposition 34 and not any other previous propositions or version of the PRA.

Commissioners Knox and Swanson agreed that option "b" was the correct option to choose.

Chairman Getman pointed out that option "b" may be too broad, and could result in the invalidation of past enforcement cases for violations of the Proposition 73 contribution limits during a special election.

Ms. Armstrong suggested that the Commission could reject both options.

Ms. Menchaca stated that staff included (a)(1) and (a)(2) in the regulation in order to clarify questions regarding the contribution limit and whether funds could be accepted in an amount exceeding net debt outstanding. Both of those subdivisions could be deleted. However, if they were left out, she questioned whether the public would know what the Commission meant.

Chairman Getman stated that she would defer to staff, and that the clarifications could be kept in and staff could work on the language.

Lance Olson, of Olson Hagel Waters & Fishburn, suggested that the language state that the contribution limits of §§ 85301 and 85302 do not apply to elections held prior to January 1, 2001.

Ms. Armstrong responded that it would not fix the problem of the contribution limits of the special and special runoff elections.

Steven Kaufman suggested that option "b" state, "There are no contribution limits in effect for contributions raised after January 1, 2001 for elections held prior to that date." This would allow unlimited fundraising solely for those elections that took place prior to January 1, 2001.

Chairman Getman stated that it might allow new committees to form for pre-January 1, 2001 elections.

Ms. Menchaca noted that it is addressed in subdivision (b) of the regulation. She did not think that the language would contradict staff's goal. She noted that staff would clarify that both subdivisions (a) and (b) could apply simultaneously.

In response to a question, Ms. Menchaca stated that, if lines 5-13 of the draft regulation are eliminated, the public might be confused about whether the Commission is referring to terms that might be in § 85316.

Ms. Armstrong stated that staff received many questions about that language after it was agreed upon by the Commission at the June 2001 meeting.

Commissioner Downey stated that Mr. Olson's suggestion might be a good compromise.

Ms. Armstrong responded that it did not address the issue of the contribution limits under Proposition 73.

Ms. Menchaca noted that § 85316 refers to a contribution for an election that may be accepted, but does not discuss the contributor. She suggested that it could be interpreted to mean that a person could accept a contribution, but a person could not make a contribution because it would be in violation of the contribution limits. The language in (a)(1) would help to clarify that issue by applying it to both the recipient and the contributor.

Chairman Getman suggested that the Commission reaffirm that § 85316 does not apply to a committee formed for an election prior to January 1, 2001, and request that staff draft different language for the Commission to consider.

There was no objection from the Commission.

Jim Knox, representing California Common Cause, expressed concern over staff's assessment that the combination of likely regulatory interpretations of Proposition 34 would lead to the situation that any candidate who ran in the 2000 election may solicit and receive contributions in unlimited amounts, and may receive an unlimited aggregate amount of contributions regardless of what that official's pre-Proposition 34 debt may be. He argued that this turns Proposition 34 and the whole notion of contribution limits "completely on its head". He agreed that preexisting debt needed to be handled in a different manner, and believed that the central purpose of § 85316 was to do just that. He supported imposing no limits on contributions that are legitimately used to pay off pre-Proposition 34 debt, but only if those contributions were actually used to pay off that debt. Capping fundraising for pre-Proposition 34 elections to the amount of net debt for that election and prohibiting fundraising for pre-Proposition 34 elections if there is no debt would not be inconsistent with the Commission's interpretation that § 85316 does not apply to previous elections.

Mr. Knox argued that, if aggregate contributions are allowed to exceed the net debt for that election, the excess would go to post-Proposition 34 elections and ought not escape the post-Proposition 34 limits. He stated that he did not agree that sitting legislators and candidates of the 2000 election should be allowed to have unlimited contributions in unlimited aggregate amounts because the contributions do matter. Mr. Knox believed that the intent of the voters was to limit contributions. He outlined several scenarios whereby Legislators will be able to accept and spend unlimited contributions even under Proposition 34 restrictions.

Mr. Knox urged the Commission to revisit the issue of regulating by election rather than by date of activity, or craft regulations in option "b" to cap contributions towards pre-Proposition 34 debt, or seek legislation to do so.

In response to a question, Ms. Armstrong explained that, if a current legislator has no campaign debt but has a pre-January 1, 2001 election committee still open, they could still fundraise into that committee.

Chairman Getman clarified that there would be a cap of $3,000 on how much of that money they could then contribute to other legislators.

Ms. Armstrong further clarified that transferred monies to a new committee would be subject to the transfer regulation, or could be used by the incumbents for their officeholder expenses.

Chairman Getman noted that the problem reinforces the need to close out the old committees.

Trudy Schafer, with the League of Women Voters of California, urged the Commission to rethink their decision to apply the statute by election. She pointed out that pre-January 1, 2001 carryover from net debt fundraising could be given to other legislators and would be limited to the $3,000 limit imposed by Proposition 34, but noted that the limit could be higher if the other legislators also had pre-January 1, 2001 campaign debt. Those debts would allow the legislators to accept a higher contribution than the $3,000.

Chairman Getman asked whether Ms. Schafer agreed with Mr. Knox's position supporting unlimited fundraising to repay debt.

Ms. Schafer responded that she was troubled by the unlimited fundraising, and the idea that legislative leadership could get hundreds of thousands of dollars in a single contribution and make use of it in ways that could influence legislation. She believed that the public thought that the provision placed caps on those types of contributions. Ms. Schafer urged the Commission to consider regulating fundraising that takes place after January 1, 2001, even if it is for an old committee.

Ms. Schafer questioned whether the termination of committees could be done without changing the statute.

Chairman Getman noted that the statute contains a provision that allows the Commission to issue regulations that require the termination of committees in a reasonable manner.

Chairman Getman stated that there were so many limitations on how the transferred monies could be used in new elections that she was not convinced that it would create a big problem. Even though large sums of money may be contributed, the limitations of Proposition 34 prevented using more than $3,000 in the new election, unless the extra monies were used to pay off outstanding debt. She believed that approaching the provision on a "per election" basis and terminating committees after an election was the best way to regulate the statute.

Commissioner Downey questioned whether transferring monies from one legislator to another legislator might be a legitimate worry.

Chairman Getman responded that she did not believe it to be a significant worry because the contributions to each legislator cannot be more than $3,000, and a contributor could give that amount to a legislator directly without channeling it through another legislator.

Mr. Knox responded that the donor stands to gain influence over the recipient.

Chairman Getman noted that $3,000 did not seem to be enough of a contribution to greatly influence a legislator.

Ms. Schafer pointed out that contributions to local elections could be much larger.

Chairman Getman responded that most major local jurisdictions have contribution limits and restrictions on transferring money.

Commissioner Swanson gave an example of a local elected official who donated monies to other local candidates and gained a great deal of influence in the process, illustrating that the concerns over the transferring of money for influence could be valid.

Chairman Getman continued to believe that the Commission's interpretation of the provision and Proposition 34 better served the greater good, and saw it as a time-limited issue. Since future elections will require the Proposition 34 limits, she did not believe that the provision would create a loophole.

Commissioner Downey requested more input from the regulated community regarding the loophole concerns in order to discern whether there were really legislators who would accept $100,000 contributions and then distribute it among colleagues to gain an advantage.

Ms. Menchaca added that staff considered some of the hypothetical situations, and, even though it could benefit those pre-January 1, 2001 election committees that were still in existence, staff provided in the proposed regulation subdivision (b)(1) that a new committee could not be created for a pre-2001 election.

Chairman Getman expressed reluctance to make a regulation based on an uncertain potential problem. She suggested that the Commission, interest groups and the public monitor to see whether the problems really existed, and apply public pressure to resolve the problem.

Chairman Getman motioned that the Commission retain its existing interpretation of § 85316 as not applying to pre-January 1, 2001 debt.

Commissioner Downey seconded the motion.

There being no objection, the motion carried.

Ms. Armstrong explained that subdivision (b)(1) of the regulation included proposed clarifying language precluding a pre-January 1, 2001 committee that has been closed from reopening. It would apply Proposition 34 to any committee that was created after January 1, 2001, even if it was designated for a pre-2001 election.

There was no objection from the Commission to keeping the clarifying language.

Mr. Olson was troubled by the word "created" in the language. He noted that there are candidates who created their committee prior to January 1, 2001, and designated that committee for an election after 2001. A literal reading of the language suggested that the contribution limits in §§ 85301 and 85302 do not apply to those committees, and he did not think that was intended. He suggested that "redesignate" be used for committees created before January 1, 2001 but being used for an election that will be subject to the contribution limits.

Chairman Getman asked staff to clarify the language.

The Commission adjourned to closed session at 12:40 p.m.

The Commission reconvened at 2:05 p.m.

Decision 2

Ms. Armstrong explained that this decision dealt with the use of post-election funds raised in 2001 and subsequent elections. Option "a" would impose a net debt limit on post election contributions without requiring that they be applied to debt reduction. She corrected staff's argument against option "a" in the memo because it was incorrect where it stated that, "Permissible contributions under option a could be as large as a six figure debt, minimizing the Act's goal of reducing the potentially corrupting influence of large contributions."

Chairman Getman clarified that any contributions received under either option "a" or "b" would be subject to Proposition 34's contribution limits because the regulation deals with post-January 1, 2001 elections.

Ms. Armstrong stated that option "b" would require that candidates use funds raised after the date of an election to retire the debt from the election. The bracketed language of option "b" would permit a third party to make a payment for an expense associated with holding office and would deem that payment to be principally for a legislative or governmental purpose.

Chairman Getman clarified that the Commission was in agreement that contributions received after an election held after January 1, 2001 election may not exceed net debts outstanding from the election and the applicable contribution limits. During the June 8, 2001 meeting, the Commission was conflicted on whether those contributions must be used to pay the net debt.

Commissioner Knox agreed that the language of § 85316 does not require that the contributions received not to exceed the net debt be used to pay off the net debt. Nonetheless, using the net debt as a limit on the amount of money that can be raised seemed senseless to him unless it meant that those monies were intended to be used to pay off those debts. He did not agree that using this money for officeholder expenses, which are not otherwise provided for, should be a valid consideration. If the legislature wants to provide for raising money for those purposes, they ought to do so, and the Commission should not make it easier by providing these otherwise unallocated funds for that purpose.

Ms. Schafer agreed with Commissioner Knox. If the Commission allows those monies to be used for other purposes than paying off the net debt, it would reward those persons who run up debts instead of rewarding the person who pays off their debt.

Chairman Getman stated that the last line of the legal defense section reads,"These funds may be used only to defray those attorneys fees and other related legal costs." Since the language was so specific in that provision, she wondered why the net debt provision was not as specific. Because it was not specific, she questioned whether the net debts were intended to be paid off by those contributions raised up to the net debt.

Commissioner Knox responded that if the draftsmen had intended the money to be used for other purposes they would have said that the net debt should be the limit, but that the money shall not necessarily be used for net debt. He noted that if committees are not required to pay off the net debt, it would become difficult to terminate the committees.

Chairman Getman agreed that it would help close the committees, but noted that there would be less of a need for a committee if its only reason to exist was to fundraise for net debt.

Commissioner Knox suggested that if the Commission adopt the approach in option "b", the issue could end up in the courts, and he believed that the Commission would prevail.

Commissioner Downey stated that the reference to net debt is both a cap and a directive as to how the money must be spent. It may not have been intended to stop an indebted committee from raising money after the election. However, he did not believe that it was appropriate to reward the committees with debts instead of rewarding those committees that were financially responsible and had no debts. He reminded the Commission that a member of the public advised the Commission at the June 8, 2001 meeting that the drafters did not intend to direct the spending of the funds towards debt, but thought it would be appropriate to use the funds for officeholder expenses.

Chairman Getman explained that existing law dealing with "co-sponsored events," would allow the legislature to use the funds for officeholder expenses under option "b". She noted that the Commissioners present seemed to agree that, if the legislature wants officeholder accounts, they should set them up.

Ms. Menchaca stated that the prohibitions of § 85316 take effect after the date of the election, and that, prior to the election, candidates would need to plan to fundraise enough monies to cover officeholder expenses.

Scott Hallabrin, representing the Assembly Ethics Committee, stated that option "a" would cut off the ability to raise funds for officeholder expenses for current and future termed-out members of the legislature. It could also lead to those persons raising funds into a future election account, then spending monies from the future election account to pay for officeholder expenses for their current office.

Mr. Hallabrin recommended that the "cosponsored events" bracketed language in option "b" be left out of regulation, and that the issue be addressed at a later time, because it could be confusing to apply.

Commissioner Knox motioned that the Commission adopt Decision 2, option "b", without the bracketed language, and reject Decision 2, option "a".

Commissioner Downey seconded the motion.

There being no objection, the motion carried.

Definition of "Net Debts Outstanding"

Ms. Armstrong explained that the proposed definition is a modified version of the federal version of "net debts outstanding". Staff modified the proposal presented at the June Commission meeting to add to the definition fundraising and compliance costs.

Chairman Getman stated that there could be practical problems associated with including tangible assets in the definition.

Ms. Armstrong responded that, even if an asset is not liquidated, it still has a value and may be liquidated at some time to help pay the debt.

Chairman Getman questioned when the asset would be assigned a fair market value.

Commissioner Swanson pointed out that some campaigns are so small the value of the tangible assets would be zero.

Commissioner Downey did not support requiring that the tangible assets be sold to pay off the debt.

Ms. Schafer suggested that a new successor committee could buy the tangible assets from the old committee, and pointed out that if there was no successor committee there should be no problem related to selling off the assets.

Chuck Bell agreed that large expensive assets should be liquidated to pay debt, but noted that the desks and furniture used by the committees have almost no fair market value. Even computers depreciate in value very rapidly and have little resale value. There is often no staff member who can compile lists of assets.

Ms. Armstrong suggested adding, "Tangible assets that are converted to cash equivalents."

Chairman Getman noted that it might be difficult to enforce.

Commissioner Downey commented that the issue may not have practical impact.

Commissioner Swanson noted that it would be difficult to measure the values of the tangible assets for enforcement purposes.

Ms. Menchaca suggested that the language be included in brackets and that staff research the issue further.

Chairman Getman agreed.

Commissioner Knox suggested that the date on which the net debt would be valued should be specified. Monies spent after the election date should not be counted toward the net debt, so that the net debt would include debts accrued as of the date of the election.

Ms. Armstrong responded that there are expenses that can be incurred after the date of the election, such as legal expenses.

Commissioner Knox pointed out that those expenses would be covered under (d)(1) and (d)(2) of the regulation.

Chairman Getman noted that there are other expenses not covered under that section, but that she shared his concern that the language could be overly broad.

Commissioner Knox suggested that staff make the language less flexible.

Chairman Getman agreed. Additionally, she asked staff to move the word "only" on page 2, line 4 of the draft regulation, so that it is placed before the words "for payment" on the next line.

There was no objection from the Commission to using the existing draft language dealing with net debt, and having staff explore other language to address Commissioner Knox's concern that it be less flexible.

Decision 3

Ms. Armstrong explained that this decision deals with the delayed applicability of the section to candidates for statewide elective office. Staff proposed two options. Option "a" employed the date of the election for which the committee was formed as its triggering mechanism, while option "b" uses the date of the activity as the triggering mechanism. Staff recommended option "a", consistent with staff's recommendation regarding the same issue as it relates to Decision 4, option "a" of proposed regulation 18536 (item 4 on the July 9, 2001 agenda). Option "a" was consistent with the Commission's prior decision in connection with elections prior to January 1, 2001.

There was no objection from the Commission to option "a".

Decisions 4 and 5

Ms. Armstrong explained that these decisions relate to the redesignation issue discussed under agenda item #7. She requested that the Commission delete the words, "with outstanding debt" from page 14, decision 5, option "b" of the staff memorandum.

<u>Item #4. Proposition 34 Regulations: Transfer and Attribution (§ 85306) - Emergency Adoption of Proposed Regulation 18536.</u>

Senior Commission Counsel Mark Krausse distributed revised draft regulation 18536 and revised sample form 460, which would enable the transfer of contributions to committees controlled by elective state office candidates.

Mr. Krausse explained that the draft regulation makes it clear that the "LIFO" or "FIFO" designation would be irrevocable.

Decision 1

Mr. Krausse explained that the Commission should decide whether the transferring committee need only keep records of attributed contributions or whether that information should also be reported in campaign reports. If a contribution was several years old, the contributor's personal information may not be up-to-date, and/or the contributor may no longer be a supporter of the candidate.

Mr. Krausse reported that there were no objections from the public to disclosure of attributed contributors in campaign reports, but he was not sure that many people had given that issue much thought during the Interested Person's meetings.

Mr. Krausse noted that items requiring reporting are no longer enumerated in the draft, but the information was captured in the reference to Government Code section 84211(f).

Chairman Getman noted that when a contribution is given to a committee, it could be used for any legal purpose that the committee deems fit.

The Commission agreed with the staff recommendation requiring disclosure of attributed contributors.

Decision 2

Mr. Krausse explained that the Commission will need to decide whether the contributor's address, occupation and employer must be disclosed. He noted that two software vendors update their programs so that a contributor's address will be updated when the same contributor makes another contribution if the address has changed.

Mr. Krausse suggested that, if the contributor did not make another contribution and the old information was incorrect, the Commission may want to include an exception in the regulation so that reporting the original information will not constitute a violation.

Commissioner Swanson favored including the name of a contributor's employer and occupation, but did not believe that a street address should be disclosed.

Chairman Getman stated that current law requires that the committee report the street address of any contributor on the paper reports, but that the address is redacted from Internet displays.

Mr. Krausse stated the revised draft regulation distributed at the meeting refers to Government Code Section 84211, eliminating the enumeration of the requirements of that section. He noted that the regulation could be changed to reflect just the name, if the Commission preferred.

Commissioner Knox suggested that the regulation expressly allow the use of the same information that was used on the original contribution, so that the committee will not have to determine whether each address is current.

Technical Assistance Division Chief Carla Wardlow explained that, under Proposition 73, there was a requirement for attribution, transfer and disclosure, and the Commission did not require that the transferring or receiving committees update the address information. To her knowledge, it presented no problem. For practical purposes, she believed committees could use the information they received when they originally received the contribution.

Commissioner Knox clarified that sometimes the software will automatically update the information, but that the regulation will not require that the information be updated.

Chairman Getman stated that, under Proposition 34, the contribution may not be kept if the name, address and employer of the contributor is not provided. She noted that, prior to Proposition 34, it was fairly common for some contributions to have missing information. Therefore, some of those old contributions may not have all of the required information at all.

Commissioner Downey noted that some of the contributors will be deceased.

Commissioner Swanson left the meeting at 2:40 p.m.

Chairman Getman clarified that the language requires that the recipient must report whatever information was available on the prior committee report.

Ms. Menchaca suggested that the language could read, "Providing the information required by subdivision (a) of Government Code Section 84211 as provided in the last campaign statement filed by that committee."

There was no objection from the Commission.

Commissioner Knox commented that it would allow using old information without updating it, and would allow using incomplete information if that is all that is available.

Chairman Getman agreed, noting that the Commission could decide not to allow attribution unless all of the information is provided.

Commissioner Knox noted that new contributions are all subject to the new law, and the issue will correct itself in a short amount of time.

Decision 3

Mr. Krausse stated that this decision involves a candidate's old campaign committee raising money for a candidate's new campaign committee after the new committee is created. He explained that option "c" most closely reflected the direction of the Commission. It would not allow a transfer if the transfer circumvents the contribution limits. He pointed out that the option of choosing between LIFO and FIFO has the potential of circumventing the limits.

Commissioner Knox noted that the statute allows a LIFO or FIFO attribution system.

In response to a question, Mr. Krausse explained that he recommended against option "c" because he believed that it could be contrary to the statute.

Ms. Menchaca stated that option "c" had authority for its language in light of other provisions of the PRA and Proposition 34. She agreed that if any version of option "c" were adopted, the Commission should add, "Except as provided in this section" to the regulation so that it does not appear to conflict with § 85306. This would send the message that, as other provisions are implemented, compliance with all the rules would be required and that the all of the rules are not intended to circumvent the basic contribution limit.

Chairman Getman provided an example of when option "c" would be applied.

In response to a question, Mr. Krausse explained that it would be relatively easy to identify an effort to circumvent the law because the old committee would have to report a contribution, and the new committee receiving the contribution would have to report the contribution. If the proposed subdivision (c) language is not adopted, § 85306 allows that attribution on a FIFO basis would make circumvention legally possible. Mr. Krausse believed that LIFO and FIFO were developed to allow committees to transfer in "old" money, not concurrently raised money.

Commissioner Downey pointed out that LIFO and FIFO were not developed to provide a means to exceed the spending limits, but could be manipulated to do that. However, § 83112 allows the Commission to put an umbrella on those manipulations. He believed that it would be legal to adopt option "c" under the umbrella of § 83112, and supported that option.

Commissioner Knox did not support any of the options under decision 3. The problem is in the statute, and he did not believe that the Commission should try to make up for deficiencies in the statute.

The Commission took no action on decision 3 at this time.

In response to a question, Mr. Krausse noted that the most recent draft language was handed out at the beginning of the meeting and eliminated the cash on hand language.

Decision 4

Mr. Krausse explained that this decision involved implementation of the effective date of § 85316 for statewide candidates. Option "a" parallels the decision the Commission previously made that Proposition 34 limits would not apply to a committee formed prior to November 5, 2002,.

Chairman Getman motioned that option "a" be accepted.

There was no objection from the Commission.

Ms. Menchaca clarified that the provision will be noticed on July 10, 2001, and the emergency adoption will take place upon filing with the Secretary of State's office, usually about 10 days after being noticed.

Commissioner Knox motioned that regulation 18536 be adopted with the changes noted.

Commissioner Downey seconded the motion.

The motion carried by a vote of 3-0.

Mr. Krausse clarified that attributions would be reported in the same way as intermediary. The Form 460, distributed by Mr. Krausse, would show the transferring committee on one line and the attributed contributor on the other line.

Item #5. Proposition 34 Regulations: Pre-notice Discussion of Regulatory Action Regarding Sections 85304 (Legal Defense Funds), 85308 (Contributions from Minors) and 84700 (Donor Information Contribution Return); Proposed Regulations 18530.4, 18570.

Section 85304

Staff Counsel Scott Tocher explained that the statute allows candidates and elected state officeholders to establish a separate account in which to raise legal defense funds. Those funds are not subject to the contribution limits.

Mr. Tocher explained that subdivision (a) of the draft regulation requires a candidate or officeholder to establish a separate committee for legal defense funds. This would make it easier for the public and the regulated community to distinguish funds raised for legal costs from funds raised for campaign activities. It would also reduce the likelihood of accidental combining of funds from those two accounts. The committee and the separate account under that committee was supported by interested persons, including those affiliated with campaigns.

Decision 1

Mr. Tocher stated that this issue involved whether to establish separate accounts for different legal proceedings, either arising from the same conduct or from completely different conduct. Staff recommended option "a", establishment of a single account, even for multiple proceedings, because it is simpler to identify the funds, because it avoids the problem of how to define a separate proceeding, and because, without contribution limits in place, there is a lesser need to keep separate accounts.

There was no objection from the Commission to the staff recommendation.

Decision 2

Mr. Tocher explained that subdivision (b) of the regulation concerns the frequency of reporting, noting that the statute provides that it is up to the Commission to decide the manner of reporting contributions to legal defense funds. Staff presented options for reporting semi-annual, quarterly, or pursuant to filings that would occur in a normal campaign. Staff recommended quarterly filing because it would provide a balance between the burden of reporting and the need for timely disclosure.

Ms. Wardlow clarified that during non-election years candidates file semi-annually, and during an election year they would file up to six reports, including four pre-election reports and two semi-annual reports.

Commissioner Knox suggested that option "c" seemed simpler and provided more timely information.

Lance Olson stated that option "c" was very broad, and included all of chapter 4. That could include 16 days of late contribution reports. He recommended that the Commission adopt option "a" or "b".

Commissioner Knox suggested that the Commission accept the staff recommendation of option "b".

There was no objection from the Commission to option "b".

Mr. Tocher explained that subdivision (c) clarified that legal defense funds are not subject to the requirements of the filing of a candidate statement of intention, the single bank account rule, and section 85402. Subdivision (d) codifies the *Pelham* opinion adopted by the Commission.

Decision 3

Mr. Tocher explained that subdivision (e) included language suggested by staff to require that amounts raised into the legal defense fund be "reasonably necessary" to defray the legal costs. This is intended to prevent stark abuses that might arise.

There was not objection to the staff recommendation from the Commission.

Decision 4

Mr. Tocher explained that subdivision (f) concerns the disbursement of excess funds. Subdivision (c) of § 85700 provides that, once a legal dispute is resolved, the funds are to be disposed of pursuant to § 89519, which governs the use of outstanding campaign funds. He pointed out that, under subdivisions (b)(1) through (b)(5), this could lead to a potential loophole circumventing the contribution limits.

Mr. Tocher presented the staff's two options, noting that option "a" limits transfer of amounts otherwise applicable to campaign contributions and for the sole purpose of reimbursing a campaign fund for litigation costs it may have incurred prior to the establishment of the legal defense fund. This would be a very narrow construction. Under this option a campaign may pay $2,000 in attorney's fees and the legal defense fund, once established, could reimburse the campaign for the attorney's fees. Option "b" would be broader, allowing transfer of funds pursuant to those purposes in (b)(1) and (b)(5), regardless of whether or not the campaign has incurred any legal defense costs, but requires that the transfer be subject to normal campaign contribution limits and attribution requirements.

Mr. Tocher noted that the Commission could also consider adopting a variation of that option with more stringent attribution, such as attribution by contributor of actual amounts contributed. That attribution would not be based on the LIFO or FIFO systems.

Chairman Getman noted that the statute allowed for excess legal defense funds to be distributed in the same manner as surplus campaign funds, and was concerned that the Commission might not have the authority for too many restrictions. She stated that the Commission had agreed that legal defense funds cannot include monies raised in excess of legal defense costs, and suggested that they may have already addressed the issue.

Mr. Tocher agreed that the construction of the language could have addressed the issue. He noted that it is difficult to get around the clear language of the statute which accepts some of the other provisions of § 89519.

Commissioner Knox noted that the Commissioners would not be well founded to limit the disbursement of the excess funds to the purposes outlined in (b)(1).

Chairman Getman suggested a compromise that would allow distribution of the excess funds consistent with (b)(1) if it is transferred with attribution because that would be the only place where it was possible to use the funds as ordinary campaign funds.

Mr. Tocher responded that mention of (b)(2) through (b)(5) should also be included for purposes of clarity.

Commissioner Knox stated that he read option "b" to mean that it would limit the disbursement to the purposes identified in (b)(1) only, excluding the purposes identified in § 89519 (b)(2) through (b)(5), in violation of the statute.

Commissioner Downey agreed, and requested that staff correct the language.

In response to a question, Mr. Tocher stated that attribution, if the funds are distributed pursuant to (b)(1), seemed consistent with the campaign contribution limitations in general.

Chairman Getman suggested that staff develop language acknowledging that the funds can be used for (b)(1) through (b)(5), but that if it is being used for (b)(1) it must be attributed.

Mr. Tocher stated that, since the Commission decided to adopt option "a" in decision 1, the proposed language in subdivision (e/f/g) was no longer necessary.

Section 85700

Mr. Tocher stated that this section concerns return of contributions lacking donor information. It requires the return of campaign contributions for $100 or more within 60 days if the recipient committee does not have on file the name, address, and occupation of the contributor.

Mr. Tocher noted that subdivision (a) of the regulation indicates when the 60 period begins, tracking existing language elsewhere that the Commission has used. It provides that the 60-day period begins on the day that the committee or candidate gains possession or control of the contribution.

Decision 1

Mr. Tocher explained that subdivision (b) concerns whether or not a committee may deposit the contribution pending receipt of the donor information. The contribution must be reported regardless of whether the committee or candidate actually uses or deposits the contribution, so there is no practical effect if the Commission decides to allow use of the contribution prior to the 60-day period. Additionally, if the contribution cannot be deposited before the information has been received, recipients may inadvertently violate the statute in those cases where a contribution is made by credit card and the information is not immediately available.

Mr. Olson commented that there is nothing in the statute prohibiting the deposit, and questioned the authority of the Commission to prohibit the deposit.

Chairman Getman responded that the Commission would have the authority as a way to make sure that the committees do not spend the money and then have no way to return it.

Chairman Getman noted that treasurers had indicated a concern with uncashed checks staying in the office, increasing the possibility of paperwork errors.

Mr. Tocher added that contributors may not expect the 60-day delay in the deposit of the check.

Commissioner Knox supported option "a", allowing the checks to be deposited.

Commissioner Downey also supported option "a", because it would eliminate an inadvertent violation. He noted that it would take away some motivation to get the contributor information.

Chairman Getman questioned how a refund could be made to a credit card contribution made over a web site.

Mr. Olson pointed out that merchant accounts can reverse the credit card transaction.

There was no objection from the Commission to option "a".

Decision 2

Mr. Tocher explained that subdivision (c) provides a time frame for the monies to be deposited in the state general fund if the contribution cannot be returned to the contributor. Option "a" would require that the contribution be paid promptly, tracking existing language in the anonymous contribution statute § 84304. Option "b" would require that the contribution be paid within 30 days after the 60-day period outlined in subdivision (a). Option "c" would require that the contribution be paid within the 60-day period outlined in subdivision (a). Staff did not have a consensus for a recommendation, but the regulated community preferred to have a little extra time to pay. Some staff members felt that the 60-day deadline should be strictly adhered to, noting that it might be clearer and easier for committees.

In response to a question, Mr. Tocher knew of no problems with the word "promptly" in option "a".

Commissioner Downey stated that option "a" allows a little time for the payment.

Commissioner Knox liked option "c" better because it recommended the same deadline for the contribution information and the payment. He noted that it was more consistent with the statute, and questioned where the Commission would get the authority for the additional 30 days in option "b". He believed that option "a" created an unnecessary ambiguity with the word "promptly".

Mr. Tocher explained that option "a" was provided to take care of a well-meaning committee that refunds the contribution only to have the contribution returned in the mail to them after the 60-day limit.

Commissioner Knox noted that prosecutorial discretion would allow those cases to go through without an enforcement action, providing the payment was forwarded immediately.

There was no objection from the Commission to option "c".

Decisions 3 and 4

Mr. Tocher explained that this draft provision required that the funds that cannot be returned to the contributor be deposited to the state general fund or the general fund of the local jurisdiction in which the committee is based. He noted that § 84304 pertains to the state general fund.

Members of the audience pointed out that the provision would be applicable to both state and local elections.

Mr. Tocher suggested that alternate language be drafted allowing the monies to be put in the local jurisdiction's general fund when it involves a local election.

Mr. Tocher explained subdivision (d), noting that it required a record of the date the candidate or committee receives the required information for the contribution. He noted that this required additional new reporting of the date the contributor's occupation was reported.

In response to a question, Ms. Menchaca clarified that the record-keeping requirement mandates that the information be kept at a $100 level and that some information needs to be kept at the $25 level.

Chairman Getman noted that this is an additional requirement when the contribution is received without the required information.

Commissioner Downey noted that this could happen often with smaller committees and expressed his concern that it adds an additional burden to treasurers.

Mr. Tocher pointed out that it allows enforcement to know whether the committee had complied with the statute.

Chairman Getman suggested that it may not be necessary if the Commission requires an amendment.

Mr. Tocher agreed, noting that if there were an amendment filing requirement the date would be on the form.

Commissioner Downey pointed out that, if, during a year requiring semi-annual reports, a contribution is received in February but the Treasurer does not learn about the contribution until May, the semi-annual report will make it appear that no violation occurred unless subdivision (d) is included in the regulation.

Mr. Kaufman commented that once a treasurer is required to record the information, the treasurer will have to record all of the information received. This would create a new burden on treasurers by requiring that they record the date the check is received as well as the date of receipt of contributor information relating to each check that is received.

Chairman Getman agreed, but questioned how else compliance with the statute could be ensured.

Mr. Tocher observed that the statute already required that treasurers track contributions which contain inadequate information. The addition of one more column to the tracking system indicating the date the information was received may not be a significant additional burden.

Chairman Getman agreed, noting that since the contributions can be deposited before the information is received, this would be the only way to track the date the information was received.

Chairman Getman noted that subdivision (e) asked the Commission to decide whether to require an amendment within 60 days or some other period of time.

Mr. Tocher added that the language is optional in its entirety, as is the timeline for filing the reports.

Commissioner Downey questioned whether the amendments would require an entire refiling.

Caren Daniels-Meade, from the Secretary of State's Political Reform Division (SOS) clarified that filing an amendment electronically requires that only the areas that need to be changed have to be completed again and then the whole file is resubmitted. She stated that the Secretary of State's office supported filing amendments.

Chairman Getman questioned whether there might be a way to file the amendments on a more regular basis, without including so many amendments that the file becomes difficult to study.

Commissioner Knox suggested that the committee be given some latitude, and that the committee should have to return the check or file an amendment by the end of the 60-day period.

Chairman Getman questioned whether, if 15 checks are received by the committee on 15 days during that 60-day period, 15 amendments would have to be filed.

Commissioner Knox noted that 15 checks received with incomplete information could be reported at one time on the 45th day.

Chairman Getman clarified that the committee would be given latitude by allowing the amendment to be filed within a certain time frame so that they would only have to submit one amendment for a number of checks at the end of that time frame.

Commissioner Knox agreed, and suggested that, if the Commission did that, they should revisit subdivision (d). The requirement that treasurers keep notes of dates information is received would then become almost irrelevant if the amended report was filed within a timely manner.

Commissioner Downey pointed out that it may be incorrect to assume that a report will have to be filed before all the data is obtained.

Chairman Getman responded that, during an election year, a number of reports and amendments are due very quickly.

Commissioner Knox noted that if no report had been filed prior to receiving the newly acquired information, then no amendment would be required.

Ms. Wardlow stated that the amendment is not meant to be linked to the date the information or contribution is received, but is meant to be linked to the date on which the report missing information is filed. The report could be filed earlier than the 60th day, but if a committee waits until the 60th day the contribution should have been returned.

Chairman Getman noted that the report is filed after the closing date for receiving contributions.

Ms. Wardlow responded that it could be linked to the closing date of the campaign statement instead.

Commissioner Downey clarified that the Commission could require that the amended statement be filed within 60 days after the filing deadline of the incomplete report. This would allow two weeks for the amendment.

Ms. Wardlow pointed out that the filing deadline can be 30 days after the closing date. She suggested that tying it to the closing date might be better.

Mr. Tocher stated his concern that it might result in too many deadlines on the 60th day for campaign offices.

In response to a question, Ms. Wardlow stated that it was not possible to correct information on a subsequent filing without filing an amendment. She noted that the amendment would not be necessary if the information is obtained before the report is filed, thus avoiding the need for an amendment.

Chairman Getman pointed out that this would result in a doubling of the campaign reporting deadlines for every committee.

Ms. Wardlow agreed.

In response to a question, Ms. Wardlow stated that a contribution that is not deposited and is returned to the contributor before the closing date would not have to be reported.

Chairman Getman stated that she was uncomfortable with doubling the reporting obligations.

Commissioner Knox commented that it was not an imposition so much as it was giving additional time and latitude.

Mr. Tocher stated that § 84213 required that the campaign statements be verified for their accuracy. Since the contribution has to be returned within 60 days if the information is not received, the Commission could consider using 70 days from the closing date of the period, giving an additional 10 days to amend the report.

Chairman Getman stated that the obligation to amend 60 or 70 days after the report is filed would be guaranteeing an amendment to every report in a major committee.

Ms. Menchaca pointed out that the committee could work very hard within the 30 days between the closing and the filing deadlines to prevent having to file an amendment.

Chairman Getman suggested requiring that the amendment be filed 70 days from the closing date, noting that the Commission would be open to better ideas.

There was no objection from the Commission.

<u>Section 85308</u>

Mr. Tocher explained that this section dealt with contributions by minors. He noted that the Commission directed staff to adopt a regulation to implement how the rebuttable presumption adopted in the *Pelham* opinion should operate. He explained that contributions made by a child under the age of 18 are presumed to be made by the parent or guardian unless it can be proven otherwise.

Mr. Tocher stated that issues arose from the Interested Persons meetings including: the capacity of minors to make verifications or sworn statements; the type and timing of documentation to rebut the presumption; tracking the source of funds used by the minor; the use of sworn statements or other verifications from other family members; and the burden on campaign officials.

Staff recommended that the Commission forego adoption of a regulation on this statute because, based on the comments from interested persons, it is basically a problem that does not exist at this time.

There was no objection from the Commission to accepting the staff recommendation.

Item #16. Legislative Report

SB 34

Government Relations Director Mark Krausse distributed the most recent version of SB 34, noting that it had been amended twice since the last analysis. The first significant difference from the staff analysis is a change in the reporting requirement for contributions of $5,000 or more, made more than 90 days from an election, from within 7 business days to within 10 business days. It also created a new section to SB 34 adding a provision that pre-2001 election fundraising is not capped to the amount of debt a committee might have.

Mr. Krausse reported that this bill is scheduled for Assembly Floor action on July 12, 2001, and included a number of provisions that the Commission requested. He recommended a support position on the bill, noting that it is not perfect but that it is as close as possible.

Chairman Getman stated that staff had worked very hard with the Legislature to try to get as many changes as they could into the bill. She agreed that it was not perfect, but thought it was important that the Commission focus on the provisions for membership communication payments and the provision for reporting payments for spokespersons.

She urged the Commission to support the bill.

Commissioner Knox motioned that the Commission support the bill. Commissioner Downey seconded the motion. There being no objection, the motion carried.

Mr. Krausse explained that SB 3 and AB 690 are very similar to one another. They are both bills addressing the issue of telephone communications in support of or opposition to a candidate. These bills require disclosure in the course of a telephone call of the name of the committee paying for the telephone call. The main difference between the two bills is that AB 690 requires that disclosure when 1,000 or more calls are made, while SB 3 requires the disclosure when the first call is made.

Mr. Krausse reported that the Enforcement Division was concerned that they may receive a high number of complaints without being able to obtain evidence of the violation. They were also concerned that the disclosure would be made but the receiver might disconnect the telephone before hearing the disclosure.

SB 3 includes a provision that would expand the mass mailing provisions to include hand delivery to the recipients at his or her home, business, place of employment or post office box. Staff agreed that it may be an improvement to the regulations, but had concerns in the context of the *McIntyre* case because it requires that the sender identification be provided when the mailer is delivered to a person's place of business. The Commission's position in that case was that the sender identification requirement only applies when the information is targeted to a person's home or mailing address, and not when handed out from a public place.

Mr. Krausse requested permission to work with Commission staff and the author's office to work out a solution on the language. He believed that there was still time to work on the bills and provide input to the authors, but did not know whether it was advisable to take an oppose position at such a late date.

Steve Russo, Chief of Enforcement, stated that staff had discussed the bills and could not provide a workable solution to the issues. He noted that there were not many incidents of this kind and questioned whether it warranted legislation that would probably generate many complaints for possible violations that cannot be proved.

In response to a question, Mr. Russo agreed that, if the telephone message was recorded, or the spoken script retained in writing, there would be a record.

Addressing a concern from the Chairman, Mr. Krausse stated that there was no provision requiring that the spoken messages be scripted in some fashion nor that any recording be maintained for a period of time for enforcement purposes.

Commissioner Downey suggested that requiring those two items could be suggested to the authors to make enforcement easier.

Mr. Russo responded that Enforcement Division would try to work with that, but pointed out that he was not comfortable that it would be a workable solution.

Chairman Getman pointed out that it could be problematic to impose the requirement after only one phone call.

Mr. Krausse suggested that the Commission might want to request that AB 690 apply to candidate, committee, or slate mailer organizations so that it deals with those entities the Commission regulates.

Chairman Getman suggested that the Commission might want to oppose the bills as currently written because as they are currently written the Commission might not be able to enforce them.

Mr. Krausse suggested that the Commission's position could be to oppose unless amended to include requiring a recorded script or a recording of taped messages, as well as changing AB 690 to apply to slate mail organizations instead of "other organizations."

There was no objection from the Commission to the suggestions by Chairman Getman and Mr. Krausse.

Mr. Krausse noted that the provisions that may be in conflict with *McIntyre* could be addressed by regulation.

Ms. Menchaca stated that changing the definition impacts both the sender identification and mailers at public expense. She suggested that the Commission oppose the bills, but work with the authors to address the concerns.

There was no objection from the Commission to opposing SB 3 and working with the authors on the mass mailing section.

<u>Items #8, #9, #10, #11, #13, #14, and #15.</u>

The following items were placed on the consent calendar:

Item #8. ***In the Matter of Norm Morikawa, FPPC No. 97/336.*** (3 counts.)
Item #9. **In the Matter of Gloria Guerra Scott, et al., FPPC No. 00/150.** (3 counts.)
Item #10. **In the Matter of Eris H. Wagner and Eris Wagner for Superior Court Judge, FPPC No. 00/851.** (2 counts.)
Item #11. ***In the Matter of Save Our Canyons, Virginia Bertoni, and Diane Caliva, FPPC No. 99/803.*** (2 counts.)
Item #13. ***In the Matter of William Bolthouse Farms, Inc., FPPC No. 01/178.*** (1 count.)
Item #14. **Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure.**

1st Tier Violation - $400.00 fine

- **a.** ***In the Matter of Western Pacific Housing - Edgewood 45 LLC, FPPC No. 2001-233.*** (1 count.)
- **b.** ***In the Matter of Eric and Wendy Schmidt, FPPC No. 2001-234.*** (1 count.)
- **c.** ***In the Matter of James Bostwick, FPPC No. 2001-228.*** (1 count.)
- **d.** ***In the Matter of Rodriguez & Floyd, FPPC No. 2001-231.*** (2 counts.)
- **e.** ***In the Matter of Stradling. Yocca, Carlson & Rauth APC, FPPC No. 2001-238.*** (1 count.)

2nd Tier Violation - $600.00 fine

- **f.** ***In the Matter of Wylie and Bette Aitken, FPPC No. 2001-237.*** (1 count.)

g. ***In the Matter of California Association of Local Conservation Corps, FPPC No. 2001-259.*** (1 count.)

Item #15. ***In the Matter of Naresh Kamboj, FPPC No. 2000/800.*** (1 count.)

There being no objection, the items were approved on the consent calendar.

Item #12. In the Matter of Sam Cardelucci and National Environmental Waste Corporation, FPPC No. 2000/5.

Chairman Getman stated her concern that, compared with fines for other enforcement cases on the agenda, this case received a fine that seemed too low for violations that included blatant refusals to comply with the law on repeated occasions after the respondents were fully and repeatedly informed of their filing obligations.

Staff Counsel Michelle Bigelow explained that the difference in this case was that it involved multiple filings arising from one activity. In November of 1997, during the preelection period, respondents placed two newspaper ads advocating the defeat of four different candidates, and were required to file four reports for the two activities. During the following late contribution reporting period, they placed one newspaper ad that required that they file four late independent expenditure reports. A similar situation arose in January of 1999, when three activities resulted in seven violations. She noted that counts 10 and 16 are disclosures that are exactly the same as the late independent expenditure reports violations.

Ms. Bigelow pointed out that the total amount spent by the respondents for all three elections was $24,000. Staff's recommended fine of $16,000 was in addition to a $2,080 fine imposed by the filing officer, resulting in a total fine amount that was 75% of what they spent. She believed that the total fine was appropriate for the conduct in this case. She agreed that the violations were egregious, but did not have proof that it was intentional. She pointed out that the respondents did not deceive or hide from the public who was behind the mailers.

In response to a question, Ms. Bigelow stated that the counts could be consolidated in a number of ways, and pointed out that, in some cases, the proposed average fine is more than the respondents spent on the newspaper article in question.

Commissioner Knox noted that the Commission is working on a systematic approach to ensure that enforcement actions are internally consistent. This case highlighted one issue being discussed: How to charge people when the same conduct can be chargeable under a number of different sections.

Chairman Getman stated that the fine had not been broken down by violation, and that the fines should be increased as the violations become more egregious.

Mr. Russo pointed out that the cases on the agenda have probably had three different chiefs providing input into them at some stage. The Chief's position, in the past, has been the greatest check to assure consistency in the stipulations. He agreed that it argued for clearer internal policies in the Enforcement Division. In this case, the intention was to create a fine level that seemed appropriate given the level of expenditures.

Mr. Russo stated that Enforcement staff looked forward to working with the Commission to get greater clarity in terms of enforcement policies so that there will be consistency in the stipulations.

Chairman Getman suggested that the fine should be increased as someone continues to violate the law. She stated that she was uncomfortable with the stipulation, but would not object to its approval.

Chairman Getman agreed with a suggestion from Mr. Russo that Enforcement Division should rework the way they arrive at fine totals so that there is a level of consistency more readily seen when judging the stipulations.

Commissioner Downey agreed, noting that when the Commission sees conduct that appears intentional instead of grossly negligent they become more concerned. He agreed that it was important to affix the fine in relation to the amount of money that was expended. He asked whether this fine would have a big impact on Mr. Cardelucci's resources.

Mr. Russo responded that Enforcement staff disagreed over the years about whether the ability to pay a fine should play a role in assessing a fine. Some believe that persons with a lot of money should be fined more than others so that it will mean more to them. However, if that is done, are people being punished for their wealth? They have tried to balance those considerations, proposing fines that are big enough to mean something to the person being fined, but are not imposed simply because that person has a particular level of wealth.

Chairman Getman noted that it points out the need to build into next year's regulatory calendar policy discussions on enforcement and on fine setting.

Chairman Getman motioned that the stipulation be approved. Commissioner Downey seconded the motion. There being no objection, the motion carried.

<u>Item #17. Executive Director's Report.</u>

The Executive Director's report was taken under advisement.

Chairman Getman announced that, during closed session, the Commission ratified Bob Tribe's role as Acting Executive Director from June 30, 2001 to the close of business July 9, 2001. Additionally, the Commission appointed Mark Krausse Acting Executive Director as of July 10, 2001, while a search for a permanent Executive Director is conducted. She thanked both Mr. Tribe and Mr. Krausse for their continuing service and willingness to pitch in when they are needed.

Item #18. Litigation Report

The Litigation Report was taken under submission.

The meeting adjourned at 4:35 p.m.

Dated: July 9, 2001

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman